

AMENDED IN SENATE MAY 23, 2003

AMENDED IN SENATE MAY 14, 2003

AMENDED IN SENATE APRIL 21, 2003

SENATE BILL

No. 457

Introduced by Senators McPherson and Margett

February 20, 2003

An act to ~~repeal Section 5814.5 of, and to repeal and add Section 5814 of, the Labor Code,~~ relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

SB 457, as amended, McPherson. Workers' compensation: benefit delays.

Existing law provides that when the payment of workers' compensation benefits has been unreasonably delayed or refused, the amount of the compensation shall be increased by 10%. Existing law provides that this delay or refusal to pay compensation constitutes good cause to rescind, alter, or amend the order, decision, or award.

~~This bill would, instead, require that the portion of the order, decision, or award that was unreasonably delayed or refused be increased by 25% or \$500, whichever is greater, but the aggregate amount of these penalties shall be no more than \$5,000 per injury claim. This bill would require, as a precondition to a claim for penalties, that the employee give the employer written notice, as specified, and would prohibit any further penalty from being assessed if the employer pays a self-imposed increase of 10% along with any other self-imposed benefit increases. This bill would also provide that the Workers' Compensation Appeals Board has no jurisdiction to hear a claim for a penalty, as defined, unless the employee files a claim within one year~~

~~from the date of the alleged unreasonable delay or refusal to pay benefits.~~

~~Existing law requires the board, when the payment of compensation has been unreasonably delayed or refused under specified circumstances, to award reasonable attorneys' fees incurred in enforcing the payment of the workers' compensation award.~~

~~This bill would repeal this provision.~~

~~This bill would also express the Legislature's intent that the Division of Workers' Compensation within the Department of Industrial Relations review the effectiveness of specified the above provisions in penalizing and deterring unreasonably late and denied benefit payments.~~

~~This bill would specify that its provisions would only become operative if SB 229 is enacted during the 2003 portion of the 2003–04 Regular Session and becomes operative.~~

~~Vote: majority. Appropriation: no. Fiscal committee: yes—no. State-mandated local program: no.~~

The people of the State of California do enact as follows:

- 1 ~~SECTION 1.—Section 5814 of the Labor Code is repealed.~~
- 2 ~~SEC. 2.—Section 5814 is added to the Labor Code, to read:~~
- 3 ~~5814. (a) When payment of compensation has been~~
- 4 ~~unreasonably delayed or refused, either prior to or subsequent to~~
- 5 ~~the issuance of an award, that portion of the order, decision, or~~
- 6 ~~award that was unreasonably delayed or refused shall be increased~~
- 7 ~~by 25 percent or five hundred dollars (\$500), whichever is greater,~~
- 8 ~~but the aggregate amount of these penalties shall be no more than~~
- 9 ~~five thousand dollars (\$5,000) per injury claim.~~
- 10 ~~(b) As a precondition to a claim for penalties under this section,~~
- 11 ~~the employee is required to give written notice to the employer of~~
- 12 ~~the claimed unreasonable delay or refusal of benefits. If, within 20~~
- 13 ~~days from the date of service of this notice, the employer pays a~~
- 14 ~~self-imposed increase of 10 percent of the amount of~~
- 15 ~~compensation delayed or refused, in addition to any other~~
- 16 ~~self-imposed increases due under this division, there shall be no~~
- 17 ~~further penalty allowed under this section. If the employer disputes~~
- 18 ~~whether the delay or refusal is unreasonable, and the judge~~
- 19 ~~determines that the delay or refusal violates this section, the judge~~
- 20 ~~shall award the penalty prescribed by subdivision (a). In~~

1 ~~determining whether the delay or refusal is unreasonable, the~~
2 ~~judge shall consider only the specific facts resulting in the delay~~
3 ~~or refusal of the specific benefit that is the subject of the request~~
4 ~~for penalties.~~

5 ~~(e) The appeals board shall have no jurisdiction to hear a claim~~
6 ~~for a penalty under subdivision (a), unless the employee files a~~
7 ~~claim for a penalty within one year from the date of the alleged~~
8 ~~unreasonable delay or refusal to pay benefits. Upon approval of a~~
9 ~~compromise and release by the appeals board, it shall be~~
10 ~~conclusively presumed that any existing or potential penalties~~
11 ~~have been resolved, unless expressly excluded by the terms of the~~
12 ~~compromise and release.~~

13 ~~(d) When a penalty is awarded under subdivision (a), the~~
14 ~~appeals board may allow a credit for any self-imposed increase~~
15 ~~under subdivision (d) of Section 4650 or subdivision (b), in order~~
16 ~~to accomplish a fair balance and substantial justice between the~~
17 ~~parties.~~

18 ~~(e) Commencing January 1, 2004, this section shall apply to all~~
19 ~~injury claims and to any penalty claim for which there has not been~~
20 ~~a final determination. The five-thousand-dollar (\$5,000) per claim~~
21 ~~limit on penalties specified in subdivision (a) shall apply to all~~
22 ~~outstanding awards for continuing penalty payments when the~~
23 ~~total penalty paid, as of January 1, 2004, has exceeded five~~
24 ~~thousand dollars (\$5,000).~~

25 ~~(f) Nothing in this section shall be deemed to create a civil~~
26 ~~cause of action.~~

27 ~~SEC. 3.—Section 5814.5 of the Labor Code is repealed.~~

28 ~~SEC. 4.—~~

29 *SECTION 1.* It is the intent of the Legislature that the Division
30 of Workers' Compensation within the Department of Industrial
31 Relations review the effectiveness of Section 5814 of the Labor
32 Code in penalizing and deterring unreasonably late and denied
33 benefit payments.

34 ~~SEC. 5.—~~

35 *SEC. 2.* This bill shall only become operative if Senate Bill
36 229 is enacted during the 2003 portion of the 2003–04 Regular
37 Session and becomes operative.